

**REMARKS**

Reconsideration and allowance of the subject application are respectfully requested.

The Examiner is requested to acknowledge the foreign priority claim and receipt of the certified copy of the priority document.

The Examiner objects to the drawings requesting that the copper pair cables 14 and 24 be shown and that function labels be added to the blocks. Replacement sheets Figures 1 and 2 make these requested corrections. Withdrawal of the objections to the drawings and acceptance of the replacement sheets are respectfully requested.

The Examiner objects to the content of the specification noting a number of specific informalities. These informalities have been corrected. Withdrawal to the objection to the specification is respectfully requested.

The Abstract is objected to for several informalities. A new Abstract which overcomes those objections is submitted with this response. Withdrawal of the objection to the Abstract is respectfully requested.

Claim 8-14 stand objected to with respect to the "characterized in that" transitional phrase. Claims 8-14 have been canceled, and new claims 15-34 do not use language objected to by the Examiner.

Claims 8-14 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,014,413 to McHale. This rejection is respectfully traversed.

To establish that a claim is anticipated, the Examiner must point out where each and every limitation in the claim is found in a single prior art reference. *Scripps Clinic & Research Found. v. Genentec, Inc.*, 927 F.2d 1565 (Fed. Cir. 1991). Every limitation contained in the claims must be present in the reference, and if even one limitation is missing from the reference, then it does not anticipate the claim. *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565 (Fed. Cir. 1986). McHale fails to satisfy this rigorous standard.

McHale discloses a communication system shown in Figure 1 with a central office 14 that includes a communication server 58 used to provide high speed data communications service. Basic elements of the server 58 are shown in Figure 2, more details of the controller 80 are shown in Figure 3, and further details of the switch and modem pool are shown in Figure 4. Since all subscribers do not necessarily desire access to data communications services on a continuous basis and many have different needs, McHale reduces the number of high speed modem resources without subscribers detecting any reduction in service.

But McHale fails to disclose all the features in independent claim 15. For example, McHale fails to disclose that the net terminal, read by the Examiner onto the network interface 31 in computer 22, includes "an XDSL modem" as well as "an in-band modem for transfer of information required for initial installation of the connection." McHale's interface network interface 31 includes only a single, XDSL modem 30. There is no teaching of both types of modems in interface 31. Nor is there any teaching in

McHale of an in-band modem being used to transfer information required for the initial installation of the connection as recited in the last element of claim 15.

Independent method claim 20 includes the step: "transmitting a signal from an in-band modem of the net terminal including a user terminal identity to a controller."

Where does McHale describe this feature? Nor is there a teaching of the subsequent step: "in response, the controller searching for an available connection path for the net terminal at an access point." McHale also fails to disclose:

creating, by the controller, a bi-directional broadband data transmission path between the user terminal and the at least one access point using the in-band modem connection of the net terminal for initial installation of the broadband data transmission path.

Using an in-band modem of the net terminal separate, from the XDSL modem in the net terminal, to establish the broadband connection between the net terminal XDSL modem and the access point XDSL modem is simply not disclosed by McHale.

Apparatus claim 21 recites plural net terminals, "each net terminal including an in-band modem and a first XDSL modem." There is no teaching in McHale of these two modems in each net terminal. Nor does McHale teach:

prior to establishment of the bi-directional broadband connection, the in-band modem in the net terminal associated with the one user terminal is configured to establish a preliminary communication with the controller to engage the controller to initialize one of the second xDSL modems for the bi-directional broadband connection.

McHale also fails to disclose dependent claim feature 22 where the "in-band modem and the first xDSL modem are configured to operate independently and in parallel in the net terminal."

Independent method claim 28 recites "establishing an initial communication from the in-band modem of the net terminal associated with the one user terminal and a controller to initialize one of the second xDSL modems for the bi-directional broad band in connection." This step is not disclosed in McHale. Moreover, McHale fails to disclose:

in response to the initial communication [from the in-band modem of the net terminal], the controller configuring the first xDSL modem [in the net terminal] and one of the second xDSL modems [in the first access point] to establish the bi-directional broadband connection between the user terminal and the first access point.

One of the benefits that McHale can not readily achieve is set forth in claims 33 and 34 which relate to establishing multiple, bi-directional, broadband connections with multiple user terminals, and in particular, situations where those multiple connections are to be established simultaneously, as recited in claim 34.

Lacking multiple features of the pending claims, it is respectfully submitted that the rejection based on McHale should be withdrawn.

Claim 14 stands provisionally rejected under 35 U.S.C. 101 as allegedly claiming the same invention as that of claim 15 of copending application serial number 09/732,878. Although Applicants do not agree with the Examiner's double patenting

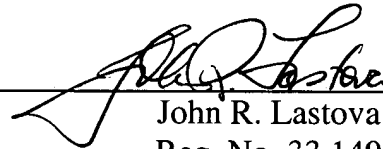
rejection, Applicants submit a Terminal Disclaimer to obviate this rejection. Withdrawal of the provisional double patenting rejection is respectfully requested.

For the reasons set forth above, Applicants respectfully submit that the present application is now in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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